

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.5298 of 2018 (O&M)
Date of Decision : 03.12.2019**

Shamsher Singh

.....Appellant

Versus

Darshana Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.G.S.Nagra, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 28.01.2015 and as even the appeal preferred against the said decree failed and was dismissed on 04.05.2018, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a declaration that he was the owner in possession of the suit land measuring 6 kanals 14 marlas being 1/5th share out of 671/2414 share in a land measuring 120 kanals 14 marlas, situated in village Sadarpur, District Karnal. Further, to injunct defendant No.1 from alienating, mortgaging or transferring the suit property in any manner.

In brief, the case set out by him was that Chuhar Singh father of the parties was owner of the suit property, who died intestate in the year 1982. Post his death the suit property was mutated in favour of all his heirs in equal shares. However, a family settlement was arrived at between the

parties vide which it was agreed that all the four sisters of the plaintiff would relinquish their respective shares in favour of their four brothers. Pursuant to the said family settlement the possession of their respective shares was delivered to all the four brothers. However, share of the mother of the parties remained with her. The other three sisters except Darshana Devi (defendant No.1) transferred their share in the name of their brothers respectively. Whereas, share of defendant No.1 continued to be reflected in her name in the revenue record. Plaintiff was owner in possession of the suit land qua the share of defendant No.1 since 1982, on the basis of said oral family settlement. As defendant No.1 declined to have entries in the revenue record altered in the name of the plaintiff and threatened to alienate the suit property, thus the suit.

In the written statement filed by defendant No.1, she admitted that her father late Chuhar Singh was the owner of the suit property and post his death, his estate was inherited by his four sons and four daughters. She was recorded owner of a land measuring 6 kanals 14 marlas as per her share. However, she denied, if any, family settlement was arrived at between the parties. She also denied if pursuant to the alleged family settlement all the sisters had agreed to relinquish their respective shares in favour of their brothers. While defendant No.1 was owner of the suit land and was in actual physical possession thereof. Therefore, the suit was liable to be dismissed.

In a separate written statement filed by defendant Nos. 2 to 5 they set out the same stand as in the written statement filed by defendant

No.1.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that claim of the plaintiff was predicated upon an oral family settlement vide which it was agreed that all the four daughters of late Chuhan Singh would relinquish their respective shares in favour of their four brothers. Ex facie, plaintiff failed to adduce any evidence to prove that any oral family settlement was arrived at between the parties. Undoubtedly, plaintiff had examined Om Parkash (PW3) and Sohan Lal (PW4) in support of his claim but from the analysis of their testimony nothing could be deciphered, if any such settlement ever took place. Even otherwise, the statement of both these witnesses suffered from multiple contradictions, and thus, could not be relied upon. Not just that, as per the version of the plaintiff, pursuant to the alleged settlement Maya Devi, Megh Wati and Ramana Devi, sisters of defendant No.1, had relinquished their shares in favour of Nathi Ram, Arjun and Sanjay respectively, but plaintiff failed to adduce any evidence to even substantiate the said plea. Plaintiff produced the family settlement (Ex.P1), wherein it was recited that all the three brothers would get the share of three sisters and Darshana Devi (defendant No.1) would relinquish her share in favour of plaintiff. Although, the said document bears signatures of Nathi Ram, Sanjay, Rajinder and Vinod etc. however, Darshana Devi (defendant No.1) was not signatory to the said document. Therefore, for, three of the brothers of the plaintiff had agreed to get the share of Darshana Devi (defendant No.1), transferred in his name, no right could be said to be

accrued to the plaintiff to claim her 1/5th share, she had inherited post her father’s death. That being so, the only and the inevitable conclusion that could be reached: the suit was liable to be dismissed for lack of evidence.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. Thus, no ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

03.12.2019

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No